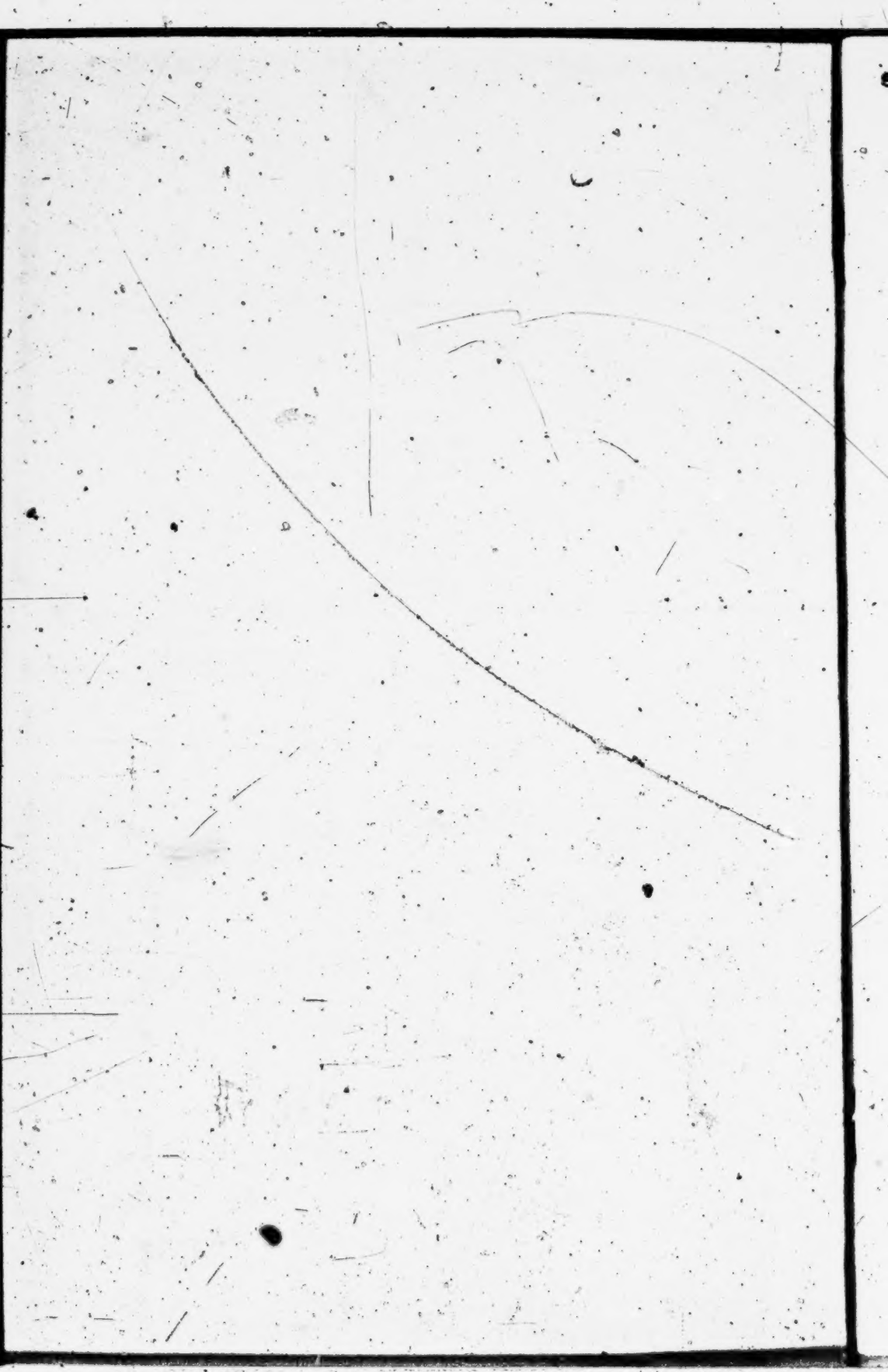

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.
AND
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.
AND
THE LINK BELT COMPANY, ET AL.,
Respondents.

ORIGINAL BRIEF ON BEHALF OF RESPONDENTS.

W. FORD REESE,
RICHARD C. BALDWIN,
JAMES E. BLAZEK,
847 National Bank of Commerce Bldg.,
New Orleans, Louisiana,
LANCELOT P. OLINDE,
P. O. Box 60626,
New Orleans, Louisiana,
Attorneys for defendants, Mayronne, Aetna Casualty and Surety Co., et al.,
JAMES E. DIAZ,
DAVIDSON, MEAUX, ONEBANE AND DONOHOE,
201 West Main Street,
Lafayette, Louisiana,
H. LEE LEONARD,
VOORHIES, LABBE, FONTENOT, LEONARD AND McGLASSON,
718 South Buchanan Street,
Lafayette, Louisiana,
Attorneys for Link Belt Company, et al.

INDEX.

	Page
THE QUESTIONS PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	2
The Rodrigue Case	2
The Dore Case	5
ARGUMENT	7
The Outer Continental Shelf Act specifically provides which law governs controversies arising on the Outer Continental Shelf ..	7
The Death on the High Seas Act held applicable to stationary platforms by the Fifth Circuit	8
Legislative History indicating that the Death on the High Seas Act was an effort to establish uniformity and an exclusive remedy	10
The jurisprudence clearly shows the exclusiveness of the Death on the High Seas Act in situations involving deaths on the high seas	12
The legislative history showing the debate in the House and the fact that the legislators understood, contrary to quotations chosen from the same debate by plaintiff in its brief, that the Death on the High Seas Act was the exclusive remedy in the Admiralty Court	16

INDEX—(Continued):

	Page
The Outer Continental Shelf Act prevents application of state statutes to platforms in the Gulf if the state statutes are in any way inconsistent with the applicable federal law	25
The Fifth Circuit Court of Appeals determines that the Death on the High Seas Act and the Louisiana Death Action are inconsistent	27
The particular inconsistencies between the two statutes:	
Proper Party Plaintiff and/or Party in Interest	28
Elements of Damage	30
Delay for Filing Suit	31
Defenses	32
Contribution and/or tort Indemnity between joint tort feasors	33
Use of Jury	35
CONCLUSION	36
CERTIFICATE OF SERVICE	38

TABLE OF AUTHORITIES.

Page

Cases:

Blumenthal v. United States, 189 F.Supp. 445, (E.D. Penn., 1960) Affirmed 306 F.2d 16 14

Brown v. American Hawaiian S.S. Co., 211 F.2d 16, 18 (3 Cir. 1954) 33

Canillas v. Joseph H. Carter, Inc., 280 F.Supp. 934 (S.D. N.Y., 1968) 14

Cunningham v. Bethlehem Steel Co., 231 F. Supp. 934 (S.D. N.Y., 1964) 14

Curd v. Todd-Johnson Dry Docks, 213 F.2d 864 (App. 1954) 33

D'aleman v. Pan American World Airways, 259 F.2d 493 (2nd Cir., 1958) concurring opinion of Judge Waterman, page 496 14

Danks v. Maher, (App. 1965) 177 So.2d 412 33

Dore, et al. v. Link Belt Co., et al., 391 F.2d 671 (1968) 27

E. B. Ward, Jr., 17 F. 456 (Cir. Ct. E. D. La. 1883) 17

First National Bank in Greenwich v National Airlines, Inc., 171 F.Supp. 528 (S.D. N.Y., 1958) Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed 288 F.2d 621 .. 14

Fradger v. Shaffer-Stein Corp., (App. 1954), 73 So. 2d 612 33

Frisard v. Oalmann, (App. 1965), 175 So.2d 407 33

Gillespie v. United States Steel Corp., 379 U.S. 150, 85 S.Ct. 308 (1964) 10

Guess v. Read, 290 F.2d 622 (5th Cir., 1961) .. 3

Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., (1952), 342 U.S. 282, 72 S. Ct. 277 33

Harvey v. Travelers Insurance Company (1964), 163 So.2d 915 34

TABLE OF AUTHORITIES—(Continued):

Page

Cases—(Continued):

Higa v. Trans-Ocean Airlines, 230 F.2d 780 (9th Cir. 1955) reh. den. (1956) writ cert. den., 352 U.S. 802, 77 S.Ct. 20 (1956) 2

Igneri v. CIE de Transport Oceaniques, 323 F.2d 257 (2nd Cir., 1963) 14

International Navigation Co. v. Lindscomb, 123 F. 475 (2nd Cir. 1903) 18

Jennings v. Goodyear Aircraft Corporation, 227 F.Supp. 246, (Del. 1964) 13

King v. Pan American World Airways, 166 F. Supp. 136, Affirmed 270 F.2d 355, Cert. den. 362 U.S. 928, 4 L. Ed. S. 746 14

Lee v. Peerless Insurance Company, (1966), 248 La. 982, 183 So.2d 328 33

Loffland Brothers Company v. Roberts, 386 F.2d 540 (5th Cir. 1967) 9

Middleton v. Luckenbach S.S. Co., Inc., 70 F.2d 326 (2nd Cir., 1934) 14

Noel v. United Aircraft, 204 F.Supp. 929 (Del., 1962) 14

Ocean Drilling and Exploration Company v. Berry Bros. Oil Field Service, 377 F.2d 511 (5th Cir. 1967) 9

Peterson v. United New York Sandyhook Pilots Ass'n, 17 F.Supp. 676 (E.D. N.Y., 1936) .. 14

Pure Oil v. Snipes, 293 F.2d 60 (5th Cir., 1961) .. 4, 9

Rodrigue v. Aetna Casualty and Surety Co., 395 F.2d 216 (5th Cir., 1968) 5

Southern Pacific Co. v. DeValle Da Costa, 190 F.Supp. 698 (1st Cir. 1911) 18

Stewart v. Roosevelt Hotel, Inc. (App. 1965) 170 So. 681 34

TABLE OF AUTHORITIES—(Continued):

Page

Cases—(Continued):

Succession of Roux v. Guidry, 182 So.2d 109 (1966) 29, 32
The Alaska, 130 U.S. 201 11
The Hamilton, 207 U.S. 398 11
The Harrisburg, 119 U.S. 199 11
United States v. Gavagan, 280 F.2d 319 (5th Cir., 1960) 14
Williams v. Moran, Procter, Mueser and Rutledge, 205 F.Supp. 208 (S.D. N.Y., 1962) 14
Wilson v. Transocean Airlines, 121 F.Supp. 85 (N.D. Calif., 1954) 12

Other:

The Admiralty Law of the Supreme Court, 1963 Ed., at Pages 99-100 16
Congressional Record—House, March 17, 1920, page 4482 35
Congressional Record—House, March 17, 1920, page 4485 30
Death Actions in Admiralty, 31 Yale Law Journal, 115 (1921) 16
Handbook of Admiralty Law in the United States, Robinson (1939) P. 140 16
Magruder and Grout, Wrongful Death within the Admiralty Jurisdiction, 35 Yale Law Journal 395, 422-3 (1926) 16

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968.

No. 436.

PAULETTE BOUDREAUX RODRIGUE, ET AL.
AND
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.
AND
THE LINK BELT COMPANY, ET AL.,
Respondents.

ORIGINAL BRIEF ON BEHALF OF RESPONDENTS.

MAY IT PLEASE THE COURT:

This is a joint brief filed on behalf of respondents, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, Humble Oil and Refining Company and Aetna Casualty and Surety Company, in the *Paulette Boudreaux Rodrigue* case, and The Link Belt Company and The Road Equipment Company, Inc. in the *Ella Mae Dubois Dore* case, in substantiation of the two Fifth Circuit Court of Appeals' decisions

herein being complained of and which are consonant with the other Federal Court of Appeal's case bearing on the same subject matter, *Higa vs. Trans-Ocean Airlines*, 230 F.2d 780 (9th Cir. 1955) *reh. den.* (1956), *writ cert. den.*, 352 U.S. 802, 77 S.Ct. 20 (1956).

QUESTIONS INVOLVED.

1. Does the Louisiana Wrongful Death Act, Article 2315 of the Louisiana Civil Code, *apply* to provide a remedy for the death of a person on a stationary platform located more than one marine league from shore on the Outer Continental Shelf?

2. Is the Louisiana Wrongful Death Act inconsistent with the Federal law applicable to deaths occurring on platforms on the Outer Continental Shelf and, accordingly, not extended under the specific terms of the Outer Continental Shelf Act?

STATEMENT OF THE CASE.

The Rodrigue Case:

The facts of this case are that three separate lawsuits were filed by the plaintiff against several defendants for the death of Mrs. Rodrigue's husband, which occurred 28 miles off the coast of Grand Isle, Louisiana. These cases were later consolidated. Prior to the trial on the merits in these cases, Aetna Casualty and Surety Co., insurer of Mayronne Drilling, brought a motion to be dismissed from

Civil Action 3109, founded upon the assertion that it could not be properly made a party defendant under the Louisiana Direct Action Statute LSA-RS 22:655, because the death did not occur within the boundaries of the State of Louisiana. The case of *Guess vs. Read,* 290 F.2d 622 (5th Cir., 1961) was cited in support of this contention. Judge West without written reasons dismissed Aetna Casualty and Surety Co. from Civil Action 3209, apparently, on the grounds that since the accident had occurred 28 miles off the coast of the State of Louisiana, the death did not occur within the State of Louisiana, and therefore the Louisiana Direct Action could not be applied to obtain jurisdiction over Aetna Casualty and Surety.

Just prior to the trial on the merits of these three consolidated cases, the defendants reurged several motions to dismiss, founded on various grounds. After hearing oral argument on all of the motions, the trial judge denied the motion of all the defendants to dismiss admiralty action #810, the Death on the High Seas claim, and granted the defendant's motion dismissing civil actions 3109 and 3298.

The trial court in dismissing civil action #3109 stated at Pages 143-44 of the trial transcript that since the death occurred more than a marine league from shore, the court did not have jurisdiction over the action.

In dismissing civil action #3298, the Honorable Gordon E. West referred extensively to the opinion of Judge Brown in *Pure Oil vs. Snipes*, 293 F.2d 60 (5th Cir., 1961) and stated:

> "If we are to say as this Snipes Case did say, that Louisiana Law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that federal maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes Case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply maritime law as Judge Brown said in the Snipes Case must be applied, then death on the high seas is the maritime law and that death on the high seas statute does provide for wrongful death and consequently, both the intent of Congress and the interpretation at least in the Snipes Case and the rights of the plaintiff are preserved and protected."

After dismissal of the two civil actions, the trial court proceeded to hear the remaining admiralty action #810 and found the defendant, Mayronne, liable and awarded a judgment to the plaintiff in the amount of $75,000.00 together with interest and costs of $13,750.00 which totaled some $88,750.00.

The Fifth Circuit on appeal of the *Rodrigue* case held that the Death on the High Seas Act was the exclusive remedy for this death that occurred beyond a marine league from the shore of the State of Louisiana. See *Rodrigue vs. Aetna Casualty and Surety Co.*, 395 F.2d 216 (5th Cir., 1968).

The Dore Case:

The wife and children of Joseph Dore, deceased, instituted a Civil Action in the United States District Court, Western District of Louisiana, Lafayette Division, against The Link Belt Company, an Iowa corporation authorized to do and doing business in the State of Louisiana, and against The Road Equipment Company, Inc., which was brought in by a supplemental petition and which is a Louisiana corporation.

The plaintiffs in Article 6 of the petition alleged that Mr. Dore was killed while working on an offshore drilling rig on South Marsh Island Block 51 in the Gulf of Mexico, which Block is approximately fifty miles south of Marsh Island, when a crane, "sold, manufactured, supplied and installed by The Link Belt Company . . . collapsed and fell a distance of more than sixty feet." It is alleged in Article 11 that petitioners bring the action under "the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, *et seq.*, Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana." It is alleged in Article 12 that complainants suffered pecuniary losses, expenses and

damages, including "loss of love and affection, loss of support and inheritance, loss of material aid and service, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock totalling $670,000.00."

Defendants, The Link Belt Company and The Road Equipment Company, filed motions to dismiss for failure of the petition to state a claim on which relief could be granted and alternatively, motions for summary judgment on the principal premise that the Death on the High Seas Act, Title 46 of the United States Code Annotated, Section 761, *et seq.*, was the exclusive remedy, if any, in the wrongful death action sought to be recognized and enforced by petitioners and, accordingly, the provisions of this Act had to be met.

The Honorable Judge Richard J. Putnam, ruled on October 26, 1966, that the Death on the High Seas Act was the only law applicable under the allegations of the petition and, accordingly, (1) the suit was removed to the admiralty side of court, (2) the administratrix of the estate of Joseph Dore for her and the minor's benefit, was the proper party plaintiff, and (3) the plaintiffs' recovery was restricted to pecuniary loss.

The Fifth Circuit Court of Appeals affirmed the trial court's decision holding that (1) the Federal Law, the Death on the High Seas Act, was to *apply* and, correlatively, the Louisiana State Law had no

application and (2) the Death on the High Seas Act was *inconsistent* with the Louisiana Wrongful Death Act and therefore, was the exclusive remedy.

ARGUMENT.

1. Does The Louisiana Wrongful Death Act, Article 2315 Of The Louisiana Civil Code, APPLY To Provide A Remedy For The Death Of A Person On A Stationary Platform Located More Than One Marine League From Shore On The Outer Continental Shelf?

The accidents which give rise to this dual and consolidated litigation occurred on stationary platforms which are located on the "Outer Continental Shelf" (as that term is defined in the Outer Continental Shelf Lands Act in Section 1331 of Title 43) at a distance more than one marine league from shore. Therefore, unquestionably, the Outer Continental Shelf Lands Act, 43 U.S.C. Section 1331, *et seq.* applies.

Section 1333, Division (a)(1) provides that the "Constitution and laws and civil and political jurisdiction of the United States. . ." are extended to all artificial islands located on the Outer Continental Shelf.

Division (a)(2) of the same Section provides as follows:

> "To the extent that they are *applicable* and not *inconsistent* with this subchapter or with other Federal laws and regulations of the Secretary

now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953, are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf." (Emphasis supplied.)

Division (a)(2) requires as conditions precedent to the federal adoption of adjacent state laws, that the adjacent state law must *apply* to the given factual situation and that the adjacent law must not be *inconsistent* with federal laws.

The two Fifth Circuit Court of Appeals' cases herein complained of by petitioners held (and so admitted by petitioners throughout) that the Death on the High Seas Act was the applicable Federal Law to a death occurring on a stationary platform more than one marine league from shore.

The issue then focused is: If the Death on the High Seas Act applies to a death under the factual situation here presented, does the adjacent state law apply? The Fifth Circuit Court of Appeals in both of these cases held that the State Law did not apply on two principal bases.

First, the consistent federal maritime jurisprudence is to the effect that the State Law will not apply to personal injury litigation which occurs on stationary platforms on the "Outer Continental Shelf", citing *Loffland Brothers Company vs. Roberts,* 386 F.2d 540 (5th Cir. 1967) writ of cert. den. (1968); *Ocean Drilling and Exploration Company vs. Berry Bros. Oil Field Service,* 377 F.2d 511 (5th Cir. 1967) and *Pure Oil Company vs. Snipes,* 293 F.2d 60 (5th Cir. 1961).

In the *Pure Oil Company vs. Snipes, supra* decision, the Fifth Circuit Court of Appeals stated on Page 64:

> "In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .
>
> "We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United States. In connection with the latter phase

—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law."

The concept that once the Federal Congress has pre-empted legislatively a subject matter does not allow for the application of State Law, is embodied in the United States Supreme Court decision of *Gillespie vs. United States Steel Corporation*, 379 U.S. 150, 85 S.Ct. 308 (1964), in which Justice Black, as the organ of the Court, held that in a death accident occurring within Ohio's territorial waters, the Jones Act provided the only remedy to the decedent's survivors to the exclusion of the Ohio Wrongful Death Action, by which the personal representative attempted to establish unseaworthiness of the vessel.

Secondly, the Fifth Circuit Court of Appeals in the *Dore* decision, held that the Louisiana State Law did not apply because the Death on the High Seas Act was meant to be a remedy for deaths occurring on the high seas to the exclusion of State Laws.

The Honorable Harrington Putnam of the Supreme Court of the State of New York, who was the author of the Death on the High Seas Bill, ruled as follows in introducing the bill to the House:

"The general purpose of the measure is to give a uniform right of action in the United States

Admiralty Courts for death by negligent acts occurring on high seas, or on navigable waters of the United States, including the Great Lakes. The common law of England and in this country had no right of action for death, the reason for this omission being commonly stated that such a right was personal which did not survive the death of the one injured. This was remedied by Lord Campbell's Act and following it our states have passed statutes conferring certain remedies for death. Congress also has changed the common law in this respect for the District of Columbia."

* * * * * *

"In this country a series of decisions by the Supreme Court of the United States has held that there is no recovery for death at sea, in the absence of a statute conferring such a remedy. (*The Harrisburg*, 119 U.S. 199; *The Alaska*, 130 U.S. 201).

"In another limited liability proceeding arising from a collision more than three miles from land between steamships both owned by Delaware corporations, the Death Statute of Delaware was applied. (*The Hamilton*, 207 U.S. 398). These state statutes however are far from uniform."

* * * * * *

"Although the constitutional grant of all cases of admiralty and maritime jurisdiction, with the power to regulate commerce, was intended to secure uniformity throughout the country, the Su-

preme Court has suffered this anomalous condition to grow up on the permissive theory that until Congress acts a state can legislate at least to the extent of binding corporations which it has created so that these statutes may extend to torts committed more than three miles from land.

"Such state statutes, diverse in their terms in conflicting of remedies are but a poor mixture for the uniform, simple legislation which Congress alone can enact.

"The present bill is designed to remedy this situation by giving a right of action for death, to be enforced in the Courts of Admiralty, both in rem and in persona."

See Sixty-Sixth Congress, Second Session, House of Representatives, Report Number 674, dated February 25, 1920, entitled "Actions for Death on the High Seas."

It is clear that the enactment of the death on the high seas act was an act on the part of Congress in order to bring uniformity in the maritime field in regards to death more than a marine league from State boundaries, and necessarily superseded the application of the death statutes of the several states which then provided various remedies for such wrongful deaths.

In *Wilson vs. Transocean Airlines,* 121 F.Supp. 85 (N.D. Calif., 1954) Judge Goodman, in a lengthy discussion of the exact question presented to this court states at Page 90 that:

"The death on the high seas act was prompted, in large part, by the desire to put an end to the uncertainty attending the application of state statutes to deaths on the high seas. Many of these uncertainties would remain to plague both courts and litigants if the state statutes could still be availed of by suitors. In addition, since the death on the high seas act was drawn with the purpose to afford an exclusive, uniform federal right of action for death on the high seas, the right of action which it created is not appropriate to serve as a mere supplement to state-created rights of action on the high seas.

"Moreover, any attempt to apply a state wrongful death statute to a death occurring on the high seas, would, today, raise a serious constitutional question. For decisions of the Supreme Court subsequent to its decision in the Hamilton, Supra, in 1907, have cast doubt on the continued vitality of the holding in that case that a state has power to create a right of action for death on the high seas."

In *Jennings vs. Goodyear Aircraft Corporation*, 227 F.Supp. 246 (Del. 1964), the Court held that:

"The Hamilton is representative of the legal chaos existing prior to the passage of the act. Application of a state wrongful death act to deaths occurring on the high seas would defeat the very uniformity which congress sought to

promote and would today raise serious constitutional issues."

See also the cases of *Igneri vs. CIE de Transport Oceaniques*, 323 Fed. 2d 257 (2nd Cir., 1963); *Peterson vs. United New York Sandyhook Pilots Ass'n*, 17 F.Supp. 676 (E.D. N.Y., 1936); *First National Bank in Greenwich vs. National Airlines, Inc.*, 171 F.Supp. 528 (S.D. N.Y., 1958), Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed 288 Fed. 2d 621; *Blumenthal vs. United States*, 189 F.Supp. 445 (E.D. Penn., 1960), Affirmed 306 F.2d 16; *Middleton vs. Luckenbach S.S. Co., Inc.*, 70 F.2d 326 (2nd Cir., 1934); *Williams vs. Moran, Procter, Mueser and Rutledge*, 205 F.Supp. 208 (S.D. N.Y., 1962); *Noel vs. United Aircraft*, 204 F.Supp. 929 (Del., 1962); *D'aleman vs. Pan American World Airways*, 259 F.2d 493 (2nd Cir., 1958), concurring opinion of Judge Waterman, Page 496; *Cunningham vs. Bethlehem Steel Co.*, 231 F.Supp. 934 (S.D. N.Y., 1964); *United States vs. Gavagan*, 280 F.2d 319 (5th Cir., 1960); *King vs. Pan American World Airways*, 166 F.Supp. 136, Affirmed 270 F.2d 355, Cert. den. 362 U.S. 928, 4 L. Ed. S. 746; *Canillas vs. Joseph H. Carter, Inc.*, 280 F.Supp. 934 (S.D. N.Y., 1968).

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (9th Cir. 1955), the Ninth Circuit Court of Appeals held that the Death on the High Seas Act was the exclusive remedy and that the Court's sole jurisdiction was in admiralty, where the plaintiff attempted to assert the Hawaiian Wrongful Death Act to a death

which had occurred on the high seas. In that case the Court stated as follows on Page 785:

> "Here, however, the Death on the High Seas Act creates the right to recover for wrongful death and designates not only the federal court for its enforcement, but a particular jurisdiction of that court. The right is a matter of federal law where state courts would have no special competence. There is more here than 'the grant of jurisdiction, of itself * * *' which indicates that jurisdiction was intended to be exclusive."

The United States Supreme Court denied writs of certiorari 352 U.S. 802, 77 S.Ct. 20 (1956).

Not only have the majority of the courts held that a death which occurs more than a marine league from a state is *exclusively* under the Federal Death on the High Seas Act, but so also have the majority of the legal writers in the maritime field. In Gilmore and Black, *The Law of Admiralty*, 1957 Ed., at Page 308, the authors in discussing recovery for death, state:

> "The high seas act provides only for recovery for death caused by wrongful act, neglect or default by way of a suit for damages in admiralty for the exclusive benefit of the listed beneficiaries; it further specifies that the recovery in such suits shall be a fair and just compensation for the pecuniary loss suffered by the persons for whose benefit this suit is brought. The

NCR

MICROCARD EDITIONS, INC.
PUBLISHERS OF ORIGINAL AND REPRINT MATERIALS ON MICROCARDS
901 TWENTY-SIXTH STREET, N.W., WASHINGTON 7, D. C. FEDERAL 3-6393

CARD 5

high seas act and the Jones Act, incorporating FELA, were passed almost at the same time; *it is a reasonable assumption that the failure of congress to provide specifically in the High Seas Act for the double recovery must have been deliberate and that only pecuniary loss to the beneficiaries was meant to be recoverable.*" (Emphasis added.)

In the work by Mr. Baer, *The Admiralty Law of the Supreme Court,* 1963 Ed., at Pages 99-100 we find the following discussion in regard to the exclusiveness of the death on the high seas act.

"But, with the passage of the death of the high seas act, the state wrongful death acts were inoperative as to the deaths caused on the high seas *beyond a marine league* from the shore of any state." (Emphasis added.)

See also Hughes, *Death Actions in Admiralty,* 31 Yale Law Journal, 115 (1921); Magruder and Grout, *Wrongful Death within the Admiralty Jurisdiction,* 35 Yale Law Journal 395, 422-3 (1926); *Handbook of Admiralty Law in the United States;* Robinson (1939) P. 140.

The petitioners herein in their brief have attempted to show by legislative history of the Death on the High Seas Act, that the legislators intended by Section 767 to provide that Act with a complementary remedy by the incorporation of state wrongful death actions. The same specious argument was

asserted and rejected by the Federal Ninth Circuit Court of Appeals in the *Higa, supra* decision, on the correct basis that the legislators did not know what they were doing in drafting Section 767 and that at best they intended to preserve to suitors *jurisdiction* in state courts to pursue state remedies in those peculiar instances presented in the cases cited by Mr. Mann. One of the cases cited by Mr. Mann was the *E. B. Ward, Jr.*, 17 F. 456 (Cir. Ct. E. D. La. 1883), in which the accident occurred as a result of a collision between a Swedish vessel and the Steamship E. B. Ward, Jr. on the high seas. The E. B. Ward, Jr. was owned by Louisiana citizens and her home port was the Port of New Orleans. The Circuit Court, first stated that under General Maritime Law, there was no action for wrongful death even in those instances involving seamen; however, natural equity and reason dictated that a wrongful death action should be provided to seamen and if there was any way of adopting state law, this should be done. The Court then used the argument that since the vessel was registered under the Flag of the State of Louisiana, that the vessel, E. B. Ward, Jr., which was the offending vessel, was "part of the territory" of the State of Louisiana and, the State Law of Louisiana would be applied to provide a remedy. Another case cited by Mr. Mann was *The Harrisburg*, 119 U.S. 211 (1886), in which the United States Supreme Court overruled the *E. B. Ward, Jr., supra*, and stated that the General Maritime Law did not provide a remedy for wrongful death. Another case is *Southern Pacific Co. vs. De-*

Valle Da Costa, 190 F. Supp. 698 (1st Cir. 1911), in which the survivors of the decedent, a Portuguese seaman killed as a result of an accident while in his employment on the vessel DeValle, which was owned by Southern Pacific Company, a corporation of the State of Kentucky, instituted an action in Federal Court attempting to apply the Wrongful Death Statute of Kentucky, the place of incorporation of the defendant. The Court of Appeals there applied the Kentucky State Statute as the law applicable to the regulation of the obligations of the offending vessel. See also *International Navigation Co. vs. Lindscomb,* 123 F. 475 (2nd Cir. 1903), in which again the law of the state flag of the offending vessel was adopted by General Maritime Law to provide a wrongful death remedy.

But, what is more important is that the Congressional Record found in Volume 59 of the Sixty-Sixth Congress, Second Session (1920), shows that the legislators in their discussion, explicitly set forth the unequivocal intention that under no circumstances were the State Court rights and remedies to be complementary—*on the contrary,* the state rights and remedies were to be exclusive in the state forum and the federal laws exclusive in the federal forum.

> "The courts may take the view that as the bill deals with accidents on the high seas and also with accidents within the territorial limits of the States, then even as to causes of action

arising on the high seas the admiralty courts and State courts are to have concurrent jurisdiction. If that view is to be avoided, it strikes me that there could be placed easily in the first section of the bill language that would place the point beyond peradventure of a doubt. I have only seen the bill in the last few moments, and am only stating an impression.

"Mr. MONTAGUE. May I suggest—

"Mr. VOLSTEAD. I yield to the gentleman.

"Mr. MONTAGUE. In reply to the statement of my colleague (Mr. Moore) I will say that jurisdiction upon this subject is found in the Constitution of the United States, and it has been held over and over again by our courts that when the Congress legislates in pursuance of constitutional authority such a law is exclusive. It requires no asservation in the bill to make it exclusive. It is exclusive by virtue of its superior jurisdiction; therefore, I submit, it is needless to amend this bill now and raise the chance of its defeat by adding a mere adjective when by the very force of the Constitution and the law in pursuance thereof it is inherently and necessarily exclusive." (Page 4483.)

* * * * * * *

"Mr. SANDERS of Indiana. The thing that occurred to me is this: Now, here is a statute providing for an action in admiralty for the decedent. It provides just how the amount re-

covered shall be distributed and it provides for certain beneficiaries. On the other hand, in section 7, you provide it shall not interfere with the laws of any State. If some State had a law providing for the recovery for wrongful death and entirely different distribution and we enact this statute and say the first statute shall not interfere with the law, you have two rights, first, within the first provisions of this act and then under the State, by the other beneficiaries, and it would subject the person charged to two suits." (Page 4484.)

* * * * * * *

"Mr. SANDERS of Indiana. I would like to know what the effect of this law would be if the amendment offered by the gentleman from Illinois (Mr. Mann) be adopted with reference to this particular question: As thus amended, the first sentence in section 7 will read, 'That the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this act.' Now, as I understand it, if a person living in Illinois should be in the beneficiary class, should be, say, the widow of a person who had been killed on the high seas, that person may now bring action in personam in the State court of Illinois, and the damages recovered shall then be distributed in accordance with the provisions of the State statutes. Now, if this act is passed as thus amended, it will give that widow the right to elect as to

whether she shall proceed under the terms of the act conferring jurisdiction upon the Federal courts with reference to this matter, or whether she shall proceed under the State statute of Illinois. Is that the gentleman's understanding?

"Mr. VOLSTEAD. That is my view of it, and my understanding is that in the form in which the bill at one time was drawn there was a provision something like this, and there was a precautionary clause added to prevent a double action; that is, to prevent action first in the State court and then afterwards an action in the Federal court.

"Mr. SANDERS of Indiana. The reason I raised the question is that you notice here that the action is for the benefit of the husband, parent, or child. My recollection of the action for wrongful death in Illinois is that the child precedes the parent in the beneficial interest. It seems to me this might give conflicting rights. If the right of action were in one person in either case, then, of course, having elected to proceed under one provision, he would be barred from proceeding under the other provision. But suppose that the parent had the right to proceed in admiralty in the Federal courts under this law, and suppose under the State law of Illinois the child had the right to proceed. Now, how are you going to have an election in that case when the right to elect is not in the same person?" (Page 4485.)

* * * * * * *

"Mr. MANN of Illinois. Mr. Speaker, would the gentleman yield for the purpose of offering an amendment—

"Mr. WOLSTEAD. I yield for that purpose.

"Mr. MANN of Illinois. In order to get it before the House for consideration I move to strike out page 3, line 12, after the word 'act,' the words 'as to causes of action accruing within the territorial limits of any State.'

"The SPEAKER pro tempore. The gentleman, from Illinois offers an amendment, which the Clerk will report.

"The Clerk read as follows:

"Amendment offered by Mr. MANN of Illinois: Page 3, line 12, after the word 'act,' strike out 'as to causes of action accruing within the territorial limits of any State.'

"Mr. MANN of Illinois. Now, I do not know whether I am right or wrong about it, because I have not examined the report on this bill carefully as reported this time. But I remember this bill very distinctly in previous Congresses, and my impression, which very likely may be erroneous, is that the purpose of the bill was to confer jurisdiction in certain cases of death where no jurisdiction now exists. I was under the impression that the bill was not intended to take away any jurisdiction which can now be exercised by any State court. I may be wrong about

that. I notice in the report in one place, on page 2, this statement from somebody:

"We are very anxious to have the bill go through in its present simple form, which avoids conflict with State statutes and yet remedies a crying defect in the maritime law as administered in this country—and so forth.

"If the amendment which I have suggested should be agreed to, the bill would not interfere in any way with rights now granted by any State statute, whether the cause of action accrued within the territorial limits of the State or not. In other words, *if a man had cause of action* and could get service, he *could sue in a State court* and *not be required to bring suit in the Federal court.*" (Page 4484.)

* * * * * * *

The attorneys for petitioners herein by omitting the above quotations in their presentation, have attempted to ascribe different meanings to Section 767 than the meaning intended by the redactors of the statute to the effect that the state court, the laws of which then provided a remedy under the peculiar circumstances cited in those cases cited by Mr. Mann, would have exclusive jurisdiction if the suit were instituted in the State forum to pursue state law remedies, whereas if the suitor elected to sue in the federal forum, this would be exclusive of any state action and the federal law would be applied exclusively.

In summary, it is submitted to the Court that the dispositive Federal Law embodied in the Death on the High Seas Act is the law applicable to provide a remedy for death occurring on platforms on the "Outer Continental Shelf" by incorporation in the Outer Continental Shelf Lands Act and, accordingly, the adjacent state law does not apply.

Alternatively, it is submitted to the Court that if the Death on the High Seas Act is not the exclusive remedy for suitors, Section 767 should be applied as intended by the redactors in saving to suitors an *alternate* route in a proceeding *in a state court to enforce a state remedy* for wrongful death in those instances exemplified by the cases cited by Mr. Mann where the State Law was applied to enforce the obligations of an offending vessel which was registered in the State or owned by state citizens. This admittedly would lead to absurd situations and the absurdity is what convinced the two Fifth Circuit Court of Appeal panels in the instances at bar and the Ninth Circuit Court of Appeals in the *Higa* decision to provide that the Death on the High Seas Act is the exclusive remedy.

For example, in the *Dore* case at bar, conceivably there are three state wrongful death laws which would control the obligations of the possible tort-feasors, Iowa as the State of incorporation of The Link Belt Company, the Louisiana Wrongful Death Action, as the State of incorporation of the Road Equipment Company, and Delaware, as the State of

incorporation of Shell Oil Company, which has now been made a party; this would mean that the three wrongful death state laws with its divergent and conflicting provisions, would apply to determine the obligations owed by each of the possible tort-feasors.

2. Is The Louisiana Wrongful Death Act Inconsistent With The Federal Law Applicable To Deaths Occurring On Platforms On The Outer Continental Shelf And, Accordingly, Not Incorporated Under The Specific Terms Of The Outer Continental Shelf Act?

As we have mentioned, the outer Continental Shelf Act and specifically 43 U.S.C. Section 1333 (a)(1), makes applicable to a platform, the Death on the High Seas Act. The law of the adjoining state (if such has been determined by Executive projection of State lines) is incorporated where "applicable *and* not inconsistent . . . with other federal laws". We have covered in the first part of this brief the question of the alleged applicability of Article 2315 of the Louisiana Civil Code; and now we would like to direct your consideration to the second question, i.e. is the Louisiana Death Statute inconsistent with the Death on the High Seas Act.

As indicated, this question must be answered because of the very terms of the outer Continental Shelf Act. Title 43 U.S.C. Section 1333 (a)(1) extends the Death on the High Seas Act, a federal statute, to the platform, without qualifications:

"(a)(1) The constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon. . ."

On the other hand, the adjoining state law is only extended if it fulfills two (2) important qualifications. See 43 U.S.C. 1333 (2).

"(2) To the extent that they are *applicable* and *not inconsistent* with this subchapter or *with other Federal laws* and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. . ."

This last determination of consistency or inconsistency is our present consideration.

A review of the decision of the Fifth Circuit in *Dore, et al. v. Link Belt Co., et al.*, 391 F.2d 671 (1968), will show a determination was made on the consistency of the Federal and State Act. Judge Ainsworth, a man trained in Louisiana law, as is the district judge, Richard J. Putnam, found glaring inconsistencies between the Death on the High Seas Act and Article 2315 of the Louisiana Civil Code. The Fifth Circuit used the following language in making this finding:

> "Appellants contend that the language of the outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable.
>
> Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides inter alia for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period

in which an action may be brought, and mere diminution of damages in the event of comparative negligence."

In support of this finding, the Court likewise discussed, as have we, the exclusive nature of the Death on the High Seas Act, and found that Article 2315 of the Louisiana Civil Code failed to meet both requirements of the Outer Continental Shelf Lands Act. However, in amplification of the finding of inconsistency and for Your Honors' convenience, we discuss each potential inconsistency separately.

Proper Party Plaintiff And/Or Party In Interest.

As Your Honors are aware, Title 46 Section 761, requires that action for Death on the High Seas be brought by the "personal representative of the decedent for the exclusive benefit of decedent's wife, husband, parent, child, children or dependent relative". With this language, we reach our first inconsistency. The pertinent portion of Article 2315 of the Louisiana Civil Code states that damages for wrongful death can be recovered:

"In favor of: (1) the surviving spouse and child or children of the decedent, or either such spouse or such child or children;

(2) The surviving father and mother of the decedent or either of them, if he left no spouse or children surviving; and

(3) The surviving brothers and sisters of the decedent, or any of them, if he left no spouse, child or parent surviving."

The classifications set out by Article 2315 of the Louisiana Civil Code above, are given in order of preference in recovery. If there is a surviving spouse and child or children, then the father and mother of the deceased have no recovery. Likewise, if the father and mother are alive and there is no spouse or surviving child, then the surviving brothers and sisters of the deceased have no right or cause of action. Additionally, the question of dependency is of no importance in extending the right or cause of action to a survivor; but is only considered in reference to the extent of damage or injury done to a named survivor. Thus, it is apparent that we immediately have a conflict between the named survivors or classification of individuals on whose behalf damages may be recovered.

Additionally, we also note the requirement under the Death on the High Seas Act that the personal representative "maintained" the suit for damages. On the other hand, Article 2315 of Louisiana Civil Code requires the individual survivor to bring the action personally and the personal representative of the decedent cannot maintain the suit. See *Succession of Roux v. Guidry*, 182 So.2d 109 (1966).

Before closing this particular phase of the inconsistency, we might note that Congress itself recog-

nized these potential inconsistencies between the Death on the High Seas Act and various state death acts. In this connection we note the language of Mr. Sanders in his conversation with Mr. Volstead. See *Congressional Record—House*, March 17, 1920, page 4485.

> "Mr. SANDERS of Indiana. The reason I raised the question is that you notice here that the action is for the benefit of the husband, parent, or child. My recollection of the action for wrongful death in Illinois is that the child precedes the parent in the beneficial interest. *It seems to me this might give conflicting rights.* If the right of action were in one person in either case, then, of course, having elected to proceed under one provision, he would be barred from proceeding under the other provision. But suppose that the present had the the right to proceed in admiralty in the Federal courts under this law, and suppose under the State law of Illinois the child had the right to proceed. Now, how are you going to have an election in that case when the right to elect is not in the same person?" (Emphasis supplied.)

Elements Of Damage.

In this connection, the death on the high seas clearly grants recovery only for pecuniary loss. See Title 46 U.S.C. Section 761. The Legislative history likewise shows that the term "pecuniary loss" was added in subsequent to Putnam's original letter which is quoted in its entirety in the House Report

No. 674 dated February 25, 1920, entitled "Actions for Death on the High Seas", Sixty-sixth Congress, Second Session, House of Representatives. Your Honors will note that Putnam, who was the author of the bill, had originally proposed the concept of quantum recovery as "fair and just compensation for the loss sustained by the survivors". Subsequent to this original proposal by Putnam, the bill was amended to restrict the phrase "fair and just compensation" to the "pecuniary loss" sustained by the survivors. See Section 762 of the Death on the High Seas Act. It, therefore, shows a Congressional intent to limit the recovery to pecuniary loss of the parties. On the other hand, as stated by the Fifth Circuit, the Louisiana Death Statute "provides inter alia for broad remedies for wrongful death, such as loss of love and affection, etc. . . ." This broad remedy would appear to be in conflict with the intent of Congress which apparently considered the unlimited type recovery and thereafter limited it by placing in the statute the term "pecuniary loss".

Delay For Filing Suit.

The death on the high seas grants a two (2) year limitation with a possible extension of ninety (90) days "after a reasonable opportunity to secure jurisdiction has offered". See Title 46 Section 763. On the other hand, the Louisiana Death Statute, Article 2315, has "built into it" a pre-emptive period of one (1) year. If the action is not exercised within one (1) year from death, the Louisiana

courts have stated it is not merely descriptive but, on the contrary, that it is pre-emptive in nature and the entire cause of action is destroyed. See *Succession of Roux v. Guidry*, 182 So.2d 109 (1966). Your Honors will also note that in the *Roux* case, *supra*, that the Louisiana Court also concluded that a suit filed by the Executor of the estate of the decedent, did not prevent the running of the pre-emptive period; but on the contrary, a suit by the specifically named survivors must be instituted prior to the one (1) year period. The Death on the High Seas Bill, as originally proposed by Putnam (House Report 674, supra) provided for a one (1) year statute of limitation but this provision was subsequently amended to provide for the two (2) year statute.

Thus, another apparent inconsistency with the Congressional intent.

Defenses.

The Death on the High Seas Act clearly makes inapplicable, the concept of contributory negligence as a bar to recovery. See Title 46 U.S.C. Section 766. Likewise, the concept of comparative negligence set forth by this section would appear, under the Court's decisions, to bar the defense of assumption of risk under all but the most unusual circumstances. On the other hand, under Article 2315 of the Louisiana Civil Code, the concept of contributory negligence and assumption of risk is re-

tained and bars all recovery of the plaintiffs. See *Curd v. Todd-Johnson Dry Docks*, 213 F.2d 864 (App 1954); see *Frisard v. Oalmann*, (App. 1965), 175 So.2d 407; see *Lee v. Peerless Insurance Company*, (1966), 248 La. 982, 183 So.2d 328, on the concept of contributory negligence; and see *Fradger v. Shaffer-Stein Corp.*, (App. 1954), 73 So.2d 612 on the concept of assumption of risk.

Thus, if Article 2315 is applied, we will be faced with the anomalous situation of two different standards being applied to the different elements of recovery.

Contribution And/Or Tort Indemnity Between Joint Tort Feasors.

As Your Honors are aware, the right of contribution between joint tort feasors has been denied in Admiralty Courts. See *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, (1952), 342 U.S. 282, 72 S.Ct. 277. Likewise, tort indemnity has been denied in the Maritime jurisdictions. See *Brown & American Hawaiian S.S. Co.*, 211 F.2d 16, 18 (3 Cir. 1954). This, however, has not been true under Article 2315 of the Louisiana Civil Code. Article 2315 carries with it the concept of solidary obligation of Louisiana law and our Codal Articles and jurisprudence clearly recognize the right of contribution between joint tort feasors. See *Danks v. Maher*, (App. 1965), 177 So.2d 412. Moreover, the Supreme Court of Louisiana has recently introduced or recognized the concept

of tort indemnity. See *Stewart v. Roosevelt Hotel, Inc.*, (App. 1965), 170 So. 681.

It would likewise appear that these concepts of contribution between joint tort feasors would also introduce into the Admiralty Court problems of credit in the event of release of one tort feasor. In the case of *Harvey v. Travelers Insurance Company*, (1964), 163 So.2d 915, which has been upheld on numerous occasions since, the Court allowed a credit for one-half (1/2) of the judgment rendered, as a result of a prior release of another joint tort feasor. The amount paid by the released joint tort feasor was not a full one-half (1/2) of the judgment.

It would thus appear there are clear conflicts between the substantive rights of tort feasors under Louisiana Tort Law of Article 2315 and the Death on the High Seas Act.

Use Of The Jury.

Under Article 2315 the jury is an appropriate fact finder for a consideration of tort liability. However, it is clear under the Death on the High Seas Act that the maritime jurisdiction, in which the jury is not recognized, is the appropriate forum. See Title 46 U.S.C. Section 761. This conflict and the consideration of possible application of the jury in a death on the high seas case, was considered by Congress but rejected. See *Congressional Record—House*, March 17, 1920, page 4482.

> "Mr. IGOE. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to incorporate into this bill a jury trial because of the difficulties in admiralty proceedings. . . ."

Thus, Congress itself recognized and articulated this inconsistency.

CONCLUSION.

1. The Outer Continental Shelf Act provides in Section 1333 (a)(1) that Federal law shall appy on platforms located on the Outer Continental Shelf; Section 1333 (a)(2) provides that State law may be incorporated only if applicable. Since there is a dispositive Federal law which governs death accidents on platforms on the Outer Continental Shelf and which is exclusive, the Death on the High Seas Act, State wrongful Death remedies may not be applied;

2. The Outer Continental Shelf Act further provides in Section 1333 (a)(2) that even if the law of the adjacent State is applicable, it will not be incorporated to provide a remedy on the Outer Continental Shelf if the law of the adjacent state is *inconsistent* with existing Federal law. The Louisiana Wrongful Death Act, Article 2315 of the Louisiana Civil Code, is patently inconsistent with the Death on the High Seas Act, *e.g.* proper party plaintiffs and /or parties in interest, elements of damage, delay for filing suit, defenses, contribution and/or tort indemnity and use of juries; accordingly, the Louisiana law *cannot* be applied in the cases at bar under the limitation provisions of the Outer Continental Shelf Act.

3. The decisions of the two Federal Fifth Circuit Court of Appeals cases that the Death on the High Seas Act as incorporated by the Outer Con-

tinental Shelf Act is the exclusive remedy in an admiralty proceeding should be affirmed.

Respectfully submitted,

W. FORD REESE,
RICHARD C. BALDWIN,
JAMES E. BLAZEK,
847 National Bank of Commerce Bldg.,
New Orleans, Louisiana,

LANCELOT P. OLINDE,
P. O. Box 60626,
New Orleans, Louisiana,
Attorneys for defendants, Mayronne, Aetna Casualty & Surety Company, et al.,

JAMES E. DIAZ,
DAVIDSON, MEAUX, ONEBANE & DONOHOE,
201 West Main Street,
Lafayette, Louisiana,

H. LEE LEONARD,
VOORHIES, LABBE, FONTENOT, LEONARD & McGLASSON,
718 South Buchanan Street,
Lafayette, Louisiana,
Attorneys for Link Belt Co., et al.

CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Original Brief on Behalf of Respondents to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson and Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana, Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana, and to Mr. Alfred S. Landry, Landry, Watkins, Cousin and Bonin, 211 East Main Street, New Iberia, Louisiana.

January ...., 1969.

.....

H. LEE LEONARD.